XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(21)

मामला क्रमांक G.A. 1116/ सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT/:
(Accused) (In Jail)

Kisun Gond, S/o Soman Gond,
Aged about 32 years,
R/o Bharwamudha, P.S. Chhura,
District Raipur (C.G.)

- Versus -

RESPONDENT:

State of Chhattisgarh,
Through P.S. Chhura,
District Raipur (C.G.)

{Criminal appeal under Section 374 (2) of the Code of the Criminal Procedure, 1973}

Division Bench:

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

10-7-2007

Mrs. Hamida Siddique, counsel for the appellant.

Mr. D.K. Gwalre, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on Dais.

L.C. Bhadoo, J: -

Today this appeal is listed for admission.

Mrs. Siddique, learned counsel for the appellant submits that the accused is in detention since February, 2001, thereby he is in detention for about 6 ½ years, therefore, the appeal itself be heard finally to which Mr. Gwalre, learned Additional Public Prosecutor has no objection. Therefore, the appeal is heard for final disposal.

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मामला क्रमांक G.A. 1116 सन् 200 1

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

This appeal is directed against the judgment of conviction and order of sentence dated 19-9-2001 passed by the 3rd Additional Sessions Judge, Raipur, in Sessions Trial No.160/2001, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life, however, no fine was imposed upon him looking to the poverty of the accused.

Case of the prosecution, in brief, is that the accused and his wife Dhanbai were sleeping in one room in the intervening night of 12th & 13th February, 2001. Lomsingh (PW-1) and Roopchand (PW-2) are neighbours. Hearing cries of the child, when mother-in-law & another daughter of the accused who were sleeping in the adjoining room came, knocked the door and asked the accused to open the door, the accused did not opened the door, therefore, they approached Lomsingh (PW-1) & Roopchand (PW-2), but even then the accused did not open the door, then they approached Lakhanlal Dhruv (PW-5), brother of the accused, he came and asked the accused to open the door, but the accused did not open the door, therefore, they said that if he will not open the door, they will break open the door, hearing this the accused opened the door and ran away. Lomsingh (PW-1) & Lakhan Singh chased the accused and caught him. They saw inside the room that Dhanbai was lying dead in injured condition. The matter was reported by Lomsingh (PW-1) under merg intimation Ex.P-2 and based on that the first information report Ex.P-1 was registered by the Station House Officer, Police Station: Chhura for commission of offence under Section 302 of the I.P.C. He left for the scene of occurrence and after giving notice Ex.P-4 to the Panchas, prepared the inquest (Ex.P-5) on the body of Dhanbai.

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मामला क्रमांक G.A. 1116/ सन् 200 (

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Body of Dhanbai was sent for post-mortem examination to Primary Health Centre, Chhura under Ex.P-6 where Dr. G.L. Tandon (PW-7) conducted post-mortem, prepared the post-mortem report Ex.P-6A and opined that cause of death was coma due to head injury and the death was homicidal in nature. The stone, weapon of offence, was seized from the place of occurrence under Ex.P-7. The site plan (Ex.P-3) was prepared by the Patwari. The stone in question was sent for examination to the Assistant Surgeon under Ex.P-10 and after examination, the doctor noticed blood on the said stone and opined that the injury found on the body of Dhanbai could be caused by the stone in question.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Gariaband, who in turn committed the case to the Sessions Judge, Raipur, from where learned 3rd Additional Sessions Judge, Raipur received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined eight witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him, however, in reply to question No.5 he has stated that he was sleeping and when people knocked his door with great force, hearing the cries he woke up. In reply to question No.7 that he was running away, Roopchand, Devnath & Lakhanlal caught him, he said yes, Roopchand & Lakhanlal also ~~got beating to him, they~~ caught him and brought back.

Learned Additional Sessions Judge after hearing counsel for respective parties, convicted and sentenced the accused as aforementioned.

GR

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मामला क्रमांक G.A.1116/ सन् 200 /

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

We have heard Mrs. Hamida Siddique, learned counsel for the appellant and Mr. D.K. Gwalre, learned Additional Public Prosecutor on behalf of the State/respondent.

Learned counsel for the appellant has not disputed the homicidal death of Dhanbai. Moreover, Dr. G.L. Tandon (PW-7) has stated in his evidence that on 13-2-2001, he conducted post-mortem on the body of Dhanbai and found that there was a lacerated wound on forehead in the size of 5" x 5" x 3", frontal bone was broken and there was bleeding; a lacerated wound on fore head in the size of 3" x 2" x 1"; a lacerated wound in the size of 2" x 1" x 1" on right side of eye; and a lacerated wound on frontal region. All the injuries were caused by hard & blunt object, cause of death was haemorrhage, coma and the death was homicidal in nature. Above evidence of the doctor is corroborated by the evidence of Lomsingh (PW-1), Roopchand (PW-2), Devnath (PW-3) & Supedram (PW-4) before whom the accused made extra judicial confession regarding the assault made by him with the stone on the body of Dhanbai. Therefore, it is established that the death of Dhanbai was homicidal in nature.

As far as involvement of the accused in the crime in question is concerned, Lakhanlal Dhruv (PW-5), real brother of the accused, has stated in his evidence that in the fateful night he was sleeping at his house, Lomsingh came and asked him to wake up as his niece was weeping in his brother's house and his brother is not opening the door, by that time it was 1.30 a.m. Therefore, he rushed towards the house of Kisun and knocked the door, but he did not opened the door, thereafter, he abused Kisun for not opening the door, after some time, Kisun opened the door, he went inside

GF).

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मामला क्रमांक Cr. A. 1116 / सन् 200 /

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

and saw the dead body of his sister-in-law Dhanbai, her head was crushed and there was injury on her forehead, after seeing this he fell down, his brother (Kisun) started running away. When Lomsingh informed him that his brother is running away, they chased him, caught him and brought him back. Therefore, from the evidence of this witness who is none else than real brother of the accused, it is established that the accused and the deceased were sleeping in one room, the room was bolted from inside, daughter of the accused was weeping, even after being asked by Lomsingh the accused did not open the door, then Lakhanlal (PW-5) came and called his brother, the accused did not open the door, therefore, he abused him and asked to open the door, the accused opened the door. This witness entered the room and saw that his sister-in-law was lying in injured condition.

Lomsingh (PW-1) has stated in his evidence that when Kisun was brought back, on enquiry, he disclosed that he has committed the murder of his wife by assaulting with a grinding stone and he further said that he was running away to hang himself for the crime he committed. Roopchand (PW-2) has corroborated the above evidence of PW-1 and stated that the accused made extra judicial confession. Devnath (PW-3) and Supedram (PW-4) have also corroborated the above evidence. In their cross-examination, defence has not been able to elicit any circumstance which discredits their evidence and their evidence corroborates the evidence of Lakhanlal Dhruv (PW-5), brother of the accused. They have also stated that in the first instance, being neighbour, they came and asked the accused to open the door, but he did not open the door, thereafter, they called Lakhanlal Dhruv (PW-5) who came and abused, thereafter, the accused opened the door and after opening the door, the accused tried to run away, they chased, caught

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	and brought him back. Therefore based on the extra judicial confession made by the accused and the circumstantial evidence that the accused and the deceased were all alone in the room which was bolted from inside, the door was opened by the accused in the presence of these witnesses, they entered the room and saw that the dead body of Dhanbai was lying in the said room and the stone, weapon of offence was also lying there. In the circumstances, based on the extra judicial confession made by the accused and the circumstantial evidence, involvement of the accused is established in committing the murder of Dhanbai. Hence, we do not find any illegality or infirmity in convicting the accused under Section 302 of the I.P.C. and sentencing him to undergo imprisonment for life for committing the murder of Dhanbai. In the result, the appeal is devoid of merit, same is liable to be dismissed and it is hereby dismissed, at the admission stage itself. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**
Soma		

GRPRJ — FS/246— 2/2007 — 50,000.